



Montoya, Darlene <dmontoya@nmag.gov>

Use of Force Policy

4 messages

Andrew Bilardello <andrew@vtsv.org>
To: "dmontoya@nmag.gov" <dmontoya@nmag.gov>

Tue, Jan 24, 2017 at 11:57 AM

Ms. Montoya, I apologize for the delay in getting you our Use of Force policy. Your first email went to the prior Chief Dave Wallace who is no longer with Taos Ski Valley. I am the new Police Chief so please update your email distribution list to reflect my email address, as I don't want to miss any communications from your department. I am attaching our new use of force policy. I have been updating the entire policy manual over the last several months, as the old one was very outdated. Should you have any questions or concerns (or suggestions!) please contact me. I look forward to working with you and your department.

Andrew Bilardello

Police Chief

7 firehouse Rd.

Taos Ski Valley, NM 87525

[575-776-2815](tel:575-776-2815)

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 **Use of Force.docx**
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Montoya, Darlene <dmontoya@nmag.gov>
To: Andrew Bilardello <andrew@vtsv.org>

Tue, Jan 24, 2017 at 12:24 PM

Thank you so much for your quick response Chief Bilardello. We will update our list with your name and email address. Just one thing that we needed to know regarding how often your staff received training in regards to these policies. Please let me know and I will attach it to your policies for the Subcommittees review.

[Quoted text hidden]

Darlene Montoya, Administrator
New Mexico Attorney General's Office
408 Galisteo Street
Santa Fe, New Mexico 87501
[\(505\) 490-4854](tel:(505)490-4854)

Andrew Bilardello <andrew@vtsv.org>
To: "Montoya, Darlene" <dmontoya@nmag.gov>

Tue, Jan 24, 2017 at 12:59 PM

I'm sorry. It's actually in the policy itself (last page). Every year the officers will receive training on the use of force policy.

Chief Bilardello

[575-776-2815](tel:575-776-2815)

From: Montoya, Darlene [mailto:dmontoya@nmag.gov]
Sent: Tuesday, January 24, 2017 12:24 PM
To: Andrew Bilardello
Subject: Re: Use of Force Policy

[Quoted text hidden]

Montoya, Darlene <dmontoya@nmag.gov>
To: Andrew Bilardello <andrew@vtsv.org>

Tue, Jan 24, 2017 at 1:10 PM

Thank you. I will highlight it for them. Have a great rest of the day and stay safe.

[Quoted text hidden]

Subject: Use of Force**Policy No: 09****Approved by: Chief Andrew Bilardello Effective Date: TBD****PURPOSE:**

The use of force by an officer is an extremely sensitive issue and requires careful study and understanding. This is especially true since the definitions of the use of force by police are based on the determination of reasonableness under the circumstances. Although the use of reasonable force is authorized by law, the use of unnecessary or unreasonable force is strictly prohibited and will not be tolerated. While clear boundaries of reasonableness can be defined for certain situations, others must be interpreted for the particular set of circumstances involved. The purpose of this section is to provide each officer with policy guidance and direction with respect to the use of force in carrying out his duties.

DEFINITIONS

- A. Deadly Force - Force that is likely to cause, or in the manner of its use or its intended use, is capable of causing death or serious bodily injury.
- B. Reasonable Belief - A belief that would be held by a reasonable and prudent law enforcement officer in the same circumstances as the acting person.
- C. Reasonable Force - Use of the reasonable amount of force needed to achieve control over an incident or person.
- D. Serious Bodily Injury - Injury that creates a substantial risk of death, serious permanent disfigurement, or protracted loss or impairment of a bodily member or organ.

POLICY

- A. Reasonable force may be used by an officer in the performance of duties, when:
 - 1. Necessary to preserve the peace, to prevent the commission of an offense or to prevent suicide, self-inflicted injury, or injury to another.
 - 2. Making lawful arrests and searches, overcoming resistance to such arrests and searches, and preventing escapes from custody.
 - 3. In self-defense or defense of another against unlawful violence to a person or property.
 - 4. Preventing or interrupting an intrusion on or interference with the lawful possession of property.
- B. An officer may use reasonable force to overcome resistance to the lawful performance of duties, even though there is no immediate or apparent danger calling for self-defense. However, the officer must be acting within the scope of official authority. Every reasonable opportunity must be given to the person being arrested to

comply. Force should be used only after all other means have failed to produce compliance.

- C. Before the application of reasonable force, officers should identify themselves as police officers and state their purpose to the offender and others present. This identification is not necessary if the officer reasonably believes his purpose and identity are already known or conditions exist which render it unfeasible to identify.
- D. There is no specific rule fitting all cases as to how much force and means may be used, each case must be decided in the light of its own facts and circumstances. Under no circumstances will the force used be greater than necessary and in no instance will deadly force be used except as stated in the Deadly Force section.
- E. Officers will use only the force necessary to accomplish lawful objectives. Officers must exhaust every reasonable means of employing the least amount of force appropriate to the situation.
- F. The Reactive Control Model (RCM) is accepted throughout the New Mexico Courts. Use of Force/Response to Resistance is advocated and taught by NMDPS Training Academy. Both are applicable and expected to be used by officers of the DPS to determine the appropriate course of action when interacting with a person(s) in a situation, which may require the use of force. Refer to NMDPS Training curriculum for Response to Resistance.

REACTIVE CONTROL MODEL™ (RCM)*					
SUBJECT BEHAVIOR:		COOPERATIVE	NON-COOPERATIVE	UNARMED ASSAILANT	ARMED ASSAILANT
SUBJECT'S "BEHAVIORAL" CUES:		Submits to Directions and Custody: • COMPLIANT • RESPONSIVE • FOLLOWS DIRECTIONS	Resists Custody By: • Not Responsive to Directions • Evasive to Questions • Verbal Resistance or Body Posture • Pulling/Moving or Running Away	Resists Custody By: UNARMED THREATENING UNARMED ATTACK Closes Distance	Resists Custody By: ARMED THREATENING ARMED ATTACK (Deadly Assault) Closes Distance
CRIMINAL ACTIVITY CUES:		Type of Criminal Activity Investigating			
OFFICER MENTAL CONDITION:		Unknown	Threat		High Risk Activity
OFFICER ACTIONS:		ALERT	CONTROL	ACTIVE	SURVIVAL
OFFICER'S ACTIONS:		Verbal Directions • AUTHORITY • ASSESSMENT • CUSTODY DECISION • POSITIONING • PROCEDURES	Verbal Persuasion EMPTY HAND TECHNIQUES ASSESSMENT • Custody Decision • Close Distance CONTROL BY • Escort Position • Distraction Techniques • Compliance Holds • Leveraged Takedowns • Impact Takedowns • Chemical Agents	Verbal Commands SHOW FORCE Draw Baton or Other Intermediate Weapon ASSESS: • Cover • Distance • Assistance • Retreat USE FORCE Use Baton or Other Intermediate Weapon • Chemicals • Canine	Verbal Warnings Survival Action SHOW FORCE Draw Firearm ASSESS: • Cover • Distance • Assistance • Retreat • Takedown USE FORCE Fire Weapon to Stop Attack
P R E S E N C E		SUBMITS TO CUSTODY ← → FORCED CUSTODY & CONTROL PROCEDURES → →			
* The RCM™ must be used in conjunction with instructional materials and only by an approved CUTC instructor. © 1988-1995, Criminal Justice Training & Consulting Services. Santa Fe, NM. (505) 473-9843. All Rights Reserved.					

REPORTING PROCEDURES

- A. A written use of force report and incident report will be submitted whenever an officer:
1. discharges a firearm, for other than training or recreational purposes;
 2. takes an action that results in, or is alleged to have resulted in, injury or death of another person;
 3. applies force through the use of lethal or less-lethal weapons; or
 4. uses any equipment applying force (spike system, riot gear, fire equipment etc.)

In any incident where use of force is used, officers shall document the incident in a report. The report will include a detailed description of the events leading to the necessity for the use of force; the amount and type of force used; the nature and extent of injuries, if any, and treatment rendered; identity of individuals involved and all other pertinent information.

- B. Non-injury Use of Force:
The use of Defensive Tactics frequently achieves the desired results without injury to any parties. However, documentation of such incidents is required. This documentation will normally be sufficiently covered in any report prepared as a result of the event. This account will include all circumstances that led to the use of a tactic and its actual use.
- C. Personal Injury Incidents:
Photographs of the injuries will be taken, and included with any reports. This applies to both officers and/or suspects.
- D. Medical Aid to Injured Parties:
When a person is injured because of an officer's use of force, the officer shall seek medical treatment for the injured person. The officer will notify the Chief of all injuries to the suspect or officer as soon as reasonably possible.

LESS-LETHAL FORCE

Defensive Tactics

Officers may use defensive tactics that they have been trained in and are qualified to use.

Police Baton

A baton or other impact tool may be used if a suspect has escalated to using threatening statements and/or gestures and begins to close the distance on the officer or another person in a threatening manner as if to batter them. The baton is not designed to be used as a club or bludgeon. Strikes should target areas of the body, which may result in

compliance by the suspect or allow the officer to gain control. Strikes to parts of the body (head, neck, spine, groin, or clavicle) capable of inflicting death or serious bodily injury shall be avoided unless justified by the guidelines of the Deadly Force section of this chapter. Nothing in this section is intended to contradict the NMLEA/DPS approved standardized training.

OC Spray

OC Spray (pepper spray) plays a distinct and viable role in the continuum of force options and gives the individual officer an alternative to hard empty hand techniques and the use of an impact weapon.

1. Use of OC Spray or Pepper Spray
 - a. OC spray may be used on a suspect who is non-cooperative and is resisting the officers efforts to control him by the following actions:
 1. suspect not responsive to directions
 2. verbal resistance or body posture
 3. pulling/moving running away
 4. aggressive movements and an escalation of resistive force.
 - b. OC spray may be used if a suspect has escalated to using threatening statements and begins to close the distance on the officer or another person in a manner as if to batter them.
 - c. The use of OC spray is target specific and should result in the officer's ability to gain control of the suspect.
 - d. The target area will consist of the face, specifically the eyes.
2. Decontamination
 - a. Decontamination begins after the suspect has been restrained with handcuffs or by other means and the suspect's resistance has ceased.
 - b. Decontamination should begin in a reasonable time frame and officer safety should be taken into consideration.
 - c. Expose suspect to fresh air and flush affected area with water.
 - d. Call medical personnel (EMS) to perform a cursory check of the suspect, to remove any contact lenses if necessary and to continue flushing the suspect with water.

- e. Once the suspect has been transported to the detention facility, the on duty detention facility personnel shall be notified that the suspect has been sprayed with OC.
- f. Under no circumstances will any creams, salves, or oils be applied to the affected area.

3. Reporting

As with any use of force or application of force, a written report will be submitted detailing the use of the OC/Pepper spray, decontamination procedures and the events leading to the use of the OC/Pepper spray.

Nothing in this section is intended to contradict the NMLEA/DPS approved standardized training. Officers shall utilize their training manual for details of maintenance and other information.

Tasers/Electronic Control Devices (ECD)

Only officers that have been trained and whose certification is current will be allowed to deploy the M-26, X-26, X-2, or X3 Air Taser.

- A. Officers shall assess each scene on a case-by-case basis to determine if the use of ECD could prevent the escalation of an event, and also prevent injuries to any parties involved.
- B. Officers who deploy the ECD at a scene shall advise dispatch and other officers responding over the radio that the Taser is being deployed whenever practical. Once on-scene the officer deploying the ECD shall continue to advise officers of the deployment, by advising "Taser, Taser, Taser." In the event that a command to fire the Taser needs to be given, the command will be "Deploy Taser", to prevent confusion as to which tool is to be used.
- C. Deploying officers should use verbal warnings to the suspect if circumstances allow for it. The officer should also try to give an *ARC AND LASER DISPLAY* if possible to prevent escalation and the actual firing of the Taser cartridge.
- D. After firing the Taser, a *FULL DEPLOYMENT CYCLE* should be administered unless circumstances dictate otherwise. After the cycle, and during the handcuffing of the suspect, the deploying officer will stand-by to prevent the suspect from becoming aggressive toward others, administering subsequent cycles if required for compliance.
- E. In the event of a *PROBE DEPLOYMENT*, the officer shall as soon as possible notify Central Dispatch. EMS personnel will proceed to the deployment location.

The deploying officer will insure treatment for any injuries to the suspect. The officer may remove the probes after EMS has given approval for a field removal. In the event field removal is denied the suspect will be transported to the hospital for probe removal. After removing the probes they will be photographed and treated as a biohazard and discarded accordingly. The used Taser cartridge will also be photographed and then entered into evidence by the deploying officer. The suspect will also be photographed, to include contact area of the probes.

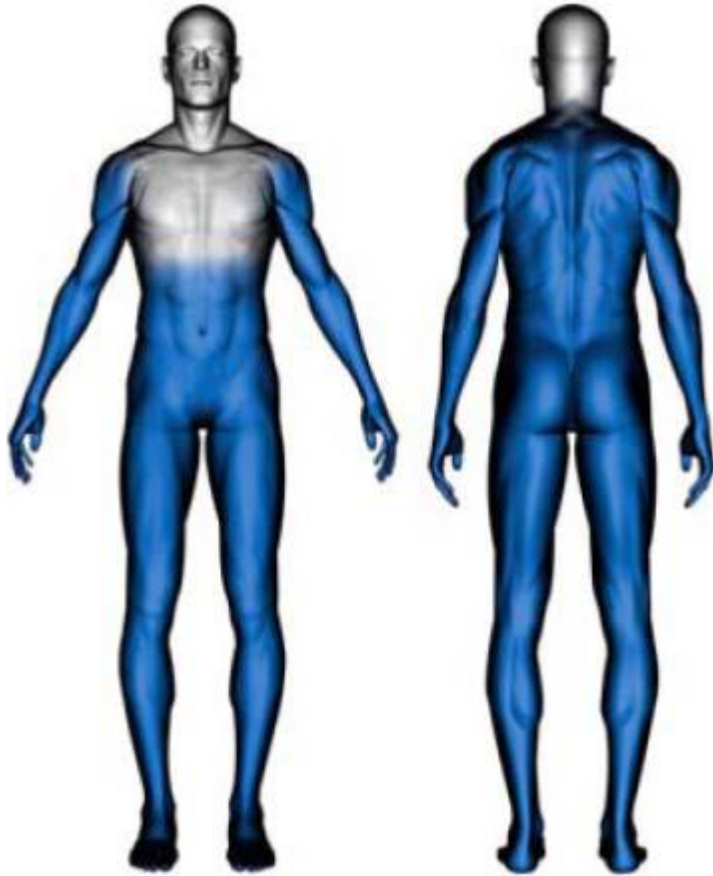
- F. In the event of a *DRIVE-STUN DEPLOYMENT*, the officer shall treat any injuries , transport the suspect for booking and notify the Chief of the situation as soon as reasonably possible. The suspect will be photographed, to include the area of contact on the suspect.
- G. In the event of a *PROBE DEPLOYMENT, DRIVE-STUN DEPLOYMENT OR AN ARC & LASER DISPLAY*, the deploying officer will submit the TASER use form for review.

Taser Training Bulletin

A new TASER Targeting Guide has been issued (2013) that will apply for the new XREP impact munition as well as ECDs such as the X26, M26 and X3.

Note, the recommended point of aim has been lowered from center of mass to lower-center of mass for frontal shots. The blue highlighted area in the below “target man” represents the preferred target area.

1. Back shots remain the preferred area when practical, preferred target areas in blue.



2. An Electronic Control Device as a force option is the same level of force as chemical spray and baton.
3. Electronic Control Device must be worn on the weak-side in either a weak-hand draw or cross-draw position.
4. Electronic Control Device deployment shall not be considered for the passively resistant subject. Active resistance or active aggression shall be required.
5. Flight from an officer alone is not justification for the use of an electronic control device. An electronic control device may be utilized on a fleeing suspect under the following circumstances;

An ECD may be used to affect an arrest of a fleeing suspect when the officer has a warrant or probable cause to make an arrest absent a warrant, with the following considerations:

1. the seriousness of the offense
2. the threat the suspect poses to the officers or others
3. the level of resistance offered by the suspect

An ECD may be used to affect a stop of a suspect when the officer has reasonable suspicion to believe that a felony has been committed. An ECD may also be utilized to affect the stop of a suspect when an officer has reasonable suspicion to believe that a crime of violence or threats of violence has been committed against a person.

An ECD shall not be used, when only reasonable suspicion exists, to affect the stop of a suspect when the crime in question is a misdemeanor non-violent crime.

Nothing in this section is intended to contradict the NMLEA/DPS approved standardized training. Officers shall utilize their training manual for details of maintenance and other information.

DEADLY FORCE

A. Authorized Use of Deadly Force

1. Deadly force may be used only when the officer reasonably believes that the action is in defense of human life, including the officers own life, or in defense of any person in immediate danger of serious bodily injury.

2. An officer may use deadly force:

When the suspect is intent on immediately endangering human life, or immediately inflicting serious bodily injury unless apprehended without delay. The officer must reasonably believe that the suspect is armed or has the means to inflict death or serious bodily injury and the following exist:

- a. Ability (Weapon)
- b. Opportunity (Distance)
- c. Immediate Jeopardy (officer's life or someone else's life is in immediate harm)
- d. Fleeing felons must meet the above requirements

3. Prohibited uses of deadly force:

- a. Officers shall not unreasonably or unnecessarily endanger themselves or the public in applying deadly force pursuant to this policy or state law.
- b. An officer shall not rely solely on third party reports as a basis for use of Deadly Force, without firsthand knowledge of an alleged offense.

- c. An officer shall not use deadly force in situations that would not be in accordance with New Mexico State Statutes.
 - d. In an attempt to apprehend fleeing felons or escapees whom are not placing the officer or another person in immediate danger of death or immediate serious bodily injury.
 - 4. All officers shall be provided with and be familiar with all provisions of the New Mexico State Statutes and this directive governing the legal use of Deadly Force.
- B. Investigations into the use of deadly force by DPS officers will be conducted by the New Mexico State Police in order to avoid any appearance of favoritism or impropriety. As such, the officer involved will notify the Chief of the incident as soon as it is safe to do so. The Chief will coordinate with Central Dispatch to insure that NMSP has been notified and is responding. The officer involved will secure the crime scene and not disturb any potential evidence and not allow any persons or vehicles to enter or leave the crime scene, with the exception of medical personnel. If the officer has a camera, he should document the scene as best as possible, as soon as possible, prior to the scene being disturbed by EMS and other responding officers. As soon as it is safe to do so, the on scene officer will cordon the area with yellow crime scene tape. The officer will then begin a log of those people entering and exiting the crime scene. Said log will contain the person's name, ID# if applicable, purpose of being in the crime scene (medical, investigator, etc.) and the time that they entered and left the crime scene. The top of the log will contain the date, location and case# for the incident. When the NMSP arrives on the scene, the involved officer will turn over the log and be relieved of his duties. The officer will respond to any requests made by NMSP, such as surrendering his duty weapon, ammunition magazines, or any other items that the NMSP investigators deem to be of evidentiary value.

ADMINISTRATIVE DUTY

- A. Immediately following an officer's involvement in an incident involving serious injury or death, the officer will be automatically placed on administrative duty or leave pending a review by the Chief and/or Village Administrator. Unless the duty status is changed to a suspension or termination status by the aforementioned, the officer shall remain in an administrative duty status until such time as the matter is resolved both legally and administratively. Reinstatement, corrective action, suspension, or termination will follow the course of the investigation.
- B. Assignment to administrative duty is non-disciplinary with no loss of pay or benefits. This duty is designed to:
 - 1. address the personal and emotional needs of the officer involved in the use of deadly force and,
 - 2. insure the community that the facts surrounding the case are fully and professionally investigated.

- C. An officer placed on administrative duty will be assigned to DPS duty in civilian clothing or other assignments at the direction of the Chief.
- D. An officer on administrative leave shall insure his/her availability to investigators until the investigation has been concluded.
- F. Officers on administrative duty or leave are authorized to carry an approved firearm, unless otherwise directed by the Chief. Officers shall not enforce laws and/or make arrests except in emergency situations.
- G. An officer whose action results in a deadly force incident will be required to counsel with an agency appointed counselor. The counselor must make written notification that the officer is fit for duty before the officer returns to duty.

The DPS will make available and reserve the right to require counseling for other officers who had involvement in a deadly force incident.

INCIDENTS OF FORCE REVIEW

The Chief or his designee will analyze use of force data on a cumulative basis to detect trends and review the data for the purpose of identifying and acting upon their implications for policy and training needs to ensure only appropriate types and amounts of force are utilized by officers. For this purpose the Chief may utilize a standards review committee comprised on internal and external sources for input.

TRAINING

- A. Annual training will be conducted to instruct officers in the Use-Of-Force policy. This instruction will be documented and will follow NMLEA/DPS accredited training curricula.
- B. Copies of this policy will be issued to each officer, before being authorized to carry a weapon, and will be updated as needed. This issuance and instruction will be documented.